

No. 1985-33

AN ACT

HB 1138

Amending the act of November 26, 1975 (P.L.438, No.124), entitled, as amended, "An act establishing child protective services; providing procedures for reporting and investigating the abuse of children; establishing and providing access to a Statewide central register and pending complaint file on child abuse; investigating such reports; providing for taking protective action including taking a child into protective custody; placing duties on the Department of Public Welfare and county children and youth social service agencies; establishing child protective services in each county children and youth social service agency; and providing penalties," further providing for the provision and regulation of child care services and recordkeeping duties and immunity from liability; and requiring certain persons to furnish information of criminal history.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The definition of "child care" in section 3 of the act of November 26, 1975 (P.L.438, No.124), known as the Child Protective Services Law, is repealed.

Section 2. Section 3 of the act is amended by adding definitions to read:

Section 3. Definitions.—As used in this act:

* * *

"Child care services" means child day care centers, group and family day care homes, foster homes, adoptive parents, boarding homes for children, juvenile detention center services or programs for delinquent or dependent children; mental health, mental retardation and drug and alcohol services for children; and any other child care services which are provided by or subject to approval, licensure, registration or certification by the Department of Public Welfare or a county social services agency or which are provided pursuant to a contract with these departments or a county social services agency. The term shall not include such services or programs which may be offered by public and private schools, intermediate units or area vocational-technical schools.

* * *

"Cooperation with an investigation" shall include, but shall not be limited to, a school or school district which permits authorized personnel from the department or child protection services to interview a student while the student is in attendance at school.

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Section 3. Sections 11 and 14(h) and (i) of the act, amended June 10, 1982 (P.L.460, No.136), are amended to read:

Section 11. Immunity from Liability.—Any person, hospital, institution, school, facility or agency participating in good faith in the making of a report, ***cooperating with an investigation*** or testifying in any proceeding

arising out of an instance of suspected child abuse, the taking of photographs, or the removal or keeping of a child pursuant to section 8, shall have immunity from any liability, civil or criminal, that might otherwise result by reason of such actions. For the purpose of any proceeding, civil or criminal, the good faith of any person required to report pursuant to section 4 shall be presumed.

Section 14. Record Keeping Duties of the Department.—* * *

(h) When a report of suspected child abuse is determined by the appropriate child protective service to be a founded report or an indicated report, the information concerning such report of suspected child abuse shall be expunged forthwith from the pending complaint file and an appropriate entry shall be made in the Statewide central register. Notice of such determination must be given to the subjects of the report other than the abused child along with an explanation of the implications of such a finding. *Notice given to subjects of the report shall include notice that their ability to obtain employment in a child care facility or program may be adversely affected by entry of the report in the Statewide central register. The notice shall also inform the subject of the report of his right, at any time, to request the secretary to amend, seal or expunge information contained in the Statewide central register and his right to a hearing if the request is denied.* When a report of suspected child abuse is determined by the appropriate child protective service to be an unfounded report, the information concerning such report of suspected child abuse shall be expunged from the pending complaint file within 12 months of the date the report was received by the department and no information other than that authorized by subsection (k), which shall not include any identifying information on any subject of such report, shall be retained by the department.

(i) The Statewide central register shall include and shall be limited to the following information: the names, *social security numbers*, age and sex of the subjects of the reports; the date or dates and the nature and extent of the alleged instances of suspected child abuse; the home addresses of subjects of the report; the county in which the suspected abuse occurred; family composition; the name and relationship to the abused child of the person or persons responsible for causing the abuse; the source of the report; services planned or provided; whether the report is a founded report, an indicated report; and the progress of any legal proceedings brought on the basis of the report of suspected child abuse.

* * *

Section 4. Section 14.1 of the act is repealed.

Section 5. Section 19 of the act is amended to read:

Section 19. Annual Reports; *Civil Penalties*.—(a) No later than April 15 of every year, the secretary shall prepare and transmit to the Governor and the General Assembly a report on the operations of the central register of child abuse and the various child protective services. The report shall include a full statistical analysis of the reports of suspected child abuse made to the department together with a report on the implementation of this act and its total cost to the Commonwealth, the secretary's evaluation of services

offered under this act and recommendations for repeal or for additional legislation to fulfill the purposes of this act. All such recommendations should contain an estimate of increased or decreased costs resulting therefrom. *The report shall also include an explanation of services provided to children who were the subjects of founded or indicated reports of child abuse while receiving child care services as defined in section 3 of this act. The department shall also describe its actions in respect to the perpetrators of the abuse.*

(b) An administrator, or other person responsible for employment decisions in a child care facility or program, who wilfully fails to comply with the provisions of section 23.1 commits a violation of this act and shall be subject to civil penalty as provided in this section.

(1) The department shall have jurisdiction to determine violations of section 23.1 and may, following a hearing, assess a civil penalty not to exceed \$2,500.

(2) The civil penalty shall be payable to the Commonwealth.

Section 6. The act is amended by adding a section to read:

Section 23.1. Information Relating to Prospective Child Care Personnel.—(a) This section shall apply to all prospective employees of child care services, prospective foster parents, prospective adoptive parents, prospective self-employed family day care providers and other persons seeking to provide child care services under contract with a child care facility or program. This section shall not apply to administrative or other support personnel unless their duties will involve direct contact with children.

(b) Administrators of child care services shall require applicants to submit with their applications the following information obtained within the preceding one-year period:

(1) Pursuant to 18 Pa.C.S. Ch.91 (relating to criminal history record information), a report of criminal history record information from the Pennsylvania State Police or a statement from the Pennsylvania State Police that the State Police central repository contains no such information relating to that person. Such criminal history record information shall be limited to that which is disseminated pursuant to 18 Pa.C.S. § 9121(b)(2) (relating to general regulations).

(2) A certification from the department as to whether the applicant is named in the central register as the perpetrator of a founded or indicated report of child abuse: Provided, That an indicated report shall not be included until the department adopts regulations specifying the manner in which the investigation required by section 17 of this act is to be conducted.

(3) Where the applicant is not a resident of this Commonwealth, administrators shall require the applicant to submit with the application for employment a report of Federal criminal history record information pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544, 86 Stat. 1115, and the department shall be the intermediary for the purposes of this section.

(c) For the purposes of this section, an applicant may submit a copy of the required information with his or her application for employment. Administrators shall maintain a copy of the required information and shall require applicants to produce the original document prior to employment.

(d) *In no case shall an administrator hire an applicant where the department has verified that the applicant is named in the central register as the perpetrator of a founded report of child abuse committed within the five-year period immediately preceding verification pursuant to this section.*

(e) *In no case shall an administrator hire an applicant if the applicant's criminal history record information indicates the applicant has been convicted, within five years immediately preceding the date of the report, of one or more of the following offenses under Title 18 of the Pennsylvania Consolidated Statutes:*

Chapter 25 (relating to criminal homicide).

Section 2702 (relating to aggravated assault).

Section 2901 (relating to kidnapping).

Section 2902 (relating to unlawful restraint).

Section 3121 (relating to rape).

Section 3122 (relating to statutory rape).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3126 (relating to indecent assault).

Section 3127 (relating to indecent exposure).

Section 4303 (relating to concealing death of child born out of wedlock).

Section 4304 (relating to endangering welfare of children).

Section 4305 (relating to dealing in infant children).

A felony offense under section 5902(b) (relating to prostitution and related offenses).

Section 5903(c) or (d) (relating to obscene and other sexual materials).

Section 6301 (relating to corruption of minors).

Section 6312 (relating to sexual abuse of children).

(f) *With regard to prospective adoptive or prospective foster parents, the following shall apply:*

(1) *In the course of causing an investigation to be made pursuant to 23 Pa.C.S. § 2535(a) (relating to investigation), an agency or person designated by the court to conduct such investigation shall require prospective adoptive parents to submit the information set forth in subsection (b)(1) and (2) for review in accordance with this section.*

(2) *In the course of approving a prospective foster parent, a foster family care agency shall require prospective foster parents to submit the information set forth in subsection (b)(1) and (2) for review by the foster family care agency in accordance with this section.*

(g) *The department shall, in the manner provided by law, promulgate the regulations necessary to carry out this section. These regulations shall:*

(1) *Set forth criteria for unsuitability for employment in a child care service in relation to criminal history record information which may include criminal history record information in addition to that set forth above. Such criteria shall be reasonably related to the prevention of child abuse.*

(2) *Set forth sanctions for administrators who wilfully hire applicants in violation of this section or in violation of the regulations promulgated hereunder.*

(3) *Provide for the confidentiality of information obtained pursuant to subsection (b).*

(h) *The department shall require persons seeking to operate child care services to submit the information set forth in subsection (b)(1) and (2) for review in accordance with this section.*

(i) *The department may charge a fee not to exceed \$10 in order to conduct the certification as required in subsection (b)(2).*

(j) *The department shall comply with certification requests no later than 14 days from the receipt of the request.*

(k) *The department shall develop a procedure for the voluntary certification of child caretakers to allow persons to apply to the department for a certificate indicating the person has met the requirements of subsection (b). The department shall also provide for the biennial recertification of such persons.*

(l) *No person employed in child care services on the effective date of this section shall be required to obtain the information required in subsection (b)(1) and (2) as a condition of continued employment. Any person who has once obtained the information required under subsection (b)(1) and (2) may transfer to another child care service established and supervised by the same organization and shall not be required to obtain additional reports before making such transfer.*

(m) *The requirements of this section shall not apply to employees of child care services who meet all the following requirements:*

(1) *The employees are under 21 years of age.*

(2) *They are employed for periods of 90 days or less.*

(3) *They are a part of a job development and/or job training program funded in whole or in part by public or private sources.*

Once employment of a person who meets these conditions extends beyond 90 days, all requirements of this section shall take effect.

(n) *Self-employed family day care providers who apply for a certificate of registration with the department after the effective date of this act shall submit with their registration application a report of criminal history record information and shall also obtain certification from the department as to whether the applicant is named in the central register as the perpetrator of a founded report of child abuse.*

Section 7. (a) Sections 1 and 4 of this act shall take effect immediately.

(b) The remainder of this act shall take effect January 1, 1986, or immediately, whichever is later.

APPROVED—The 1st day of July, A. D. 1985.

DICK THORNBURGH